

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION

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APR 29 2004

LUTHER D. THOMAS, Clerk
By:  Deputy Clerk

TINA M. LEPONE-DEMPSEY and)
SHANNON M. ALEXANDER)

PLAINTIFFS,)

vs.)

CIVIL ACTION FILE NO:
3:03-CV-043-JTC

ORIGINAL

CARROLL COUNTY)
COMMISSIONERS; ROBERT BARR,)
Chairman of Carroll County)
Commissioners; CARROLL COUNTY)
SHERIFF'S DEPARTMENT; TERRY)
LANGLEY, Sheriff, acting individually)
and as an agent for Carroll County)
Sheriff's Department; PHILLIP)
WAGNER, Sheriff, acting individually)
and as an agent for Carroll County)
Sheriff's Department; JOHN DOE, acting)
individually and as an agent for Carroll)
County Sheriff's Department; JOHN)
DOE, acting individually and as an agent)
for Carroll County Sheriff's Department; }
CITY OF VILLA RICA; VILLA RICA }
POLICE DEPARTMENT;)
DEAN MADDOX, Chief of Police,)
acting individually and as an agent for)
Villa Rica Police Department; BRIAN)
CAMP, acting individually and as an)
agent for Villa Rica Police Department;)
ROBERT MULLINAX, acting)
individually and as an agent for Villa)
Rica Police Department; JOHN DOE,)
acting individually and as an agent for)
Villa Rica Police Department;; JOHN)
DOE, individually and as an agent for)
Villa Rica Police Department,)

DEFENDANTS.)

PLAINTIFFS' MOTION FOR RECONSIDERATION
AND BRIEF IN SUPPORT THEREOF

COMES NOW, Plaintiffs in the above-referenced matter and request this Honorable Court to reconsider it's decision dismissing Plaintiff's claim against Defendants City of Villa Rica, Brian Camp, Dean Maddox, Robert Mullinax and the John Does and in support thereof Motion shows as follows:

INTRODUCTION

This matter came fore the court on Plaintiff's claims of illegal search/excessive force, false imprisonment, false arrest, aggravated assault, assault and battery, malicious prosecution, defamation and intentional infliction of emotional distress. The claims arose out of the unreasonable search of Plaintiff, Tina Lepone Dempsey's home by Carroll County and Villa Rica Police Departments. During the warrantless search, Plaintiff Dempsey was physically assaulted and humiliated by Defendant and Plaintiff Alexander placed in reasonable apprehension and fear of receiving a violent injury when Defendant placed a gun to her head.

When Plaintiff Dempsey insisted Defendants leave her home, she was arrested and charged with disorderly conduct. Defendants' physical assault of Plaintiff Dempsey caused her serious injury to the body, to wit: Plaintiff suffered shoulder and back injuries which *required medical treatment including surgery* for these injuries.

On April 2, 2002 the Carroll County State Court Solicitor determined the evidence against Plaintiff was not sufficient to prosecute this case and Nolle Prosc the criminal charge against Plaintiff. (Ex. 1). Plaintiff filed this action on April 17, 2003 alleging Defendants' actions violated her right to be secure in her person and to be free

from unreasonable searches and seizures as protected by the Fourth and Fourteenth Amendments of the United States Constitution.

THE COURT SHOULD RECONSIDER THIS MATTER FOR THE FOLLOWING REASONS:

I. Plaintiff had a right to rely on the Villa Rica City Attorney

The court dismissed Defendants Villa Rica, Brian Camp, Dean Maddox, Robert Mullinax and the John Does without prejudice for failure to properly serve them with process within 120 days pursuant to Fed. Rule of Civil Proc. (4). Plaintiff's do not dispute the court's reasoning, but argues it was reasonable to rely on the City Attorney's representation he was acknowledging service at least for the Defendant City, if not for the individual Defendants. The Code of Professional Responsibility section Canon 7, Ethical Consideration (EC) 7-38 states:

EC 7-38 "A lawyer should be courteous to opposing counsel and should accede to reasonable requests regarding court proceedings, settings, continuances, **waiver of procedural formalities**, and similar matters which do not prejudice the rights of his client. He should follow local customs of courtesy or practice, unless he gives timely notice to opposing counsel of his intention not to do so. A lawyer should be punctual in fulfilling all professional commitments."

Plaintiffs' counsel relied on the City Attorney's representation that he would accept service of summons for Defendants City of Villa Rica, Dean Maddox, Robert Mullinax and the John Does. (Danley Aff.) Plaintiffs' counsel memorialized this conversation and received no objection to his memorialized representation. (Ex. 2).

Plaintiffs' counsel used the exact same process with the other Defendants. Fed Rule (4) as articulated by the Court states:

“ . . . or by delivering a copy of the Summons and of the Complaint to an agent authorized by appointment or by law to receive service of process.”

No argument has been made that the City Attorney was not authorized to receive service nor was the City prejudiced.

CONCLUSION

Plaintiffs' counsel had every right to rely on the City Attorney's representation he could accept service for Defendant City of Villa Rica. Even if he did not have authority to represent the individual Defendants, he had an obligation to notify Plaintiffs' counsel of this fact. At a minimum, Defendants' Motion should be denied and Plaintiff have an **extension of time** to serve the individual Defendants Dean Maddox, Brian Camp and Robert Mullinax to avoid statute of limitations issues. The failure to do so will be a manifest injustice to Plaintiffs.

Respectfully submitted,



Leonard Danley, Sr.

Attorney for Plaintiffs

Georgia Bar No. 204710

6519 Spring Street, Suite B
Douglasville, Georgia 30134
(770)942-2053

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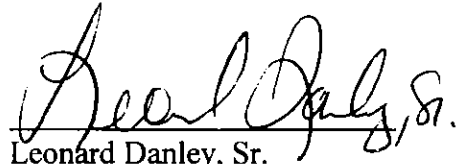
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DEFENDANTS.)

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of Plaintiff's Motion for Reconsideration upon Virginia Martin, Mullins, Whalen & Westbury, 101 South Hill Street, Griffin, Georgia 30224 and Sun Choy, Freeman, Mathis & Gary, 100 Galleria Parkway, Suite 1600, Atlanta, Georgia 30339 by depositing same in the U.S. Mail with proper postage thereon to ensure delivery.

This the 2nd day of April, 2004.


Leonard Danley, Sr.
Attorney for Plaintiff
Georgia Bar Number 204710

Danley & Associates, P.C.
6519 Spring Street, Suite B
Douglasville, Georgia 30134
(770) 942-2053

STATE COURT OF CARROLL COUNTY

**F. O. BOX 338, ROOM 211 ,
CARROLLTON, GEORGIA 30117**

**ROBERT SULLIVAN
JUDGE**

**S. JAMES TUGGLE
SOLICITOR**

April 2, 2002

**COURT CONVENES
FIRST MONDAYS, MARCH, JUNE
SEPTEMBER, DECEMBER**

Ms. Tina Dempsey
P. O. Box 163
Austell, Georgia 30168

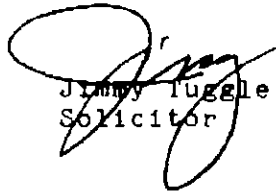
Re: Citation #32548
Disorderly Conduct
April 17, 2001

Dear Ms. Dempsey:

Please be advised that I have declined to prosecute
the above-referenced citation.

If you have any questions, please contact me.

Very truly yours,


Jimmy Tuggle,
Solicitor

JT:jgc



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acting individually and as an agent for
Villa Rica Police Department;; JOHN
DOE, individually and as an agent for
Villa Rica Police Department,

DEFENDANTS.

AFFIDAVIT OF LEONARD DANLEY, SR.

PERSONALLY APPEARED before me a notary public duly authorized to administer oaths under the laws of the State of Georgia, the undersigned, LEONARD DANLEY, SR., who after being duly sworn according to the law did state as follows:

1.

My name is Leonard Danley, Sr.. I am over the age of 18 and I am competent to give this affidavit. I give this affidavit freely and voluntarily and it is based on my personal knowledge.

2.

I represent Plaintiffs in the above matter through the office of Danley & Associates, P.C.

3.

In or around the last of July 2003, I made contact with Attorney David Basil, County Attorney for the County of Carroll and David Mecklin, City Attorney for Defendant City of Villa Rica, to inquire if they would waive service for the various Defendants.

4.

I do not know Mr. Basil and to my knowledge have never met him nor talked to him prior to my conversation regarding acknowledging service on behalf of Defendants Carroll County and others.

5.

To the contrary, I am quite familiar with Mr. Mecklin as our paths cross quite frequently while representing our clients in various courts. Additionally, I know him to

be the City attorney for the City of Villa Rica, and I am also familiar with him as a Municipal Court Judge in Carroll County.

6.

My normal process when pursuing service on a Defendant is to contact any known attorney or agent to determine if the Defendant(s) will acknowledge and waive formal service. This is especially true in cases where the Defendant is a municipality or other public entity.

7.

I made contact with Mr. Basil and determined that an acknowledgment of service would be fine with his clients and he gave me forwarding instructions.

8.

I spoke with Mr. Mecklin and our conversation was a little less formal than with Mr. Basil.

9.

In the end, Mr. Mecklin assured me that the acknowledgment would be fine and that I should send it to his attention. It does seem like there was some discussion about the individual Defendants, but Mr. Mecklin told me he would let me know if there was a problem.

10.

In a letter dated July 30, 2003 to Mr. Mecklin from me, I memorialized our conversation regarding the acknowledgment (Letter attached as Exhibit A). I forwarded to Mr. Mecklin seven (7) copies of the Complaint, Summons and other Pre-Trial

Instructions. Mr. Mecklin did not contact me with any contrary information and at no time said to me he could not accept service.

11.

In a letter dated July 30, 2003 to Mr. Basil from me, I memorialized my conversation regarding my waiver request and he arranged for the Carroll County Defendants to Answer the Complaint and Summons.

12.

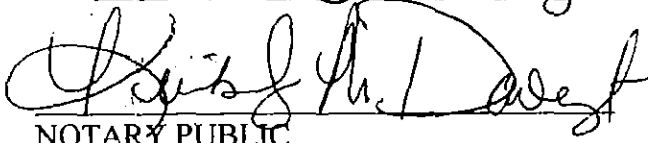
I had no reason to expect less from Mr. Mecklin.

Further Affiant sayeth not.


LEONARD DANLEY, SR.

Sworn to and subscribed before me

this 14th day of January, 2004.


NOTARY PUBLIC

KIMBERLY M. DAVENPORT
NOTARY PUBLIC, DOUGLAS CO., GA
MY COMMISSION EXPIRES JUNE 21, 2007

Danley & Associates, P.C.

Attorneys at Law
6519 Spring Street, Suite B
Douglasville, Georgia 30134

Leonard Danley, Sr.
of Counsel
Tuntia Jones

(770) 942-2053
Fax (770) 942-2051

July 30, 2003

Mr. David Mecklin
Tisinger, Tisinger, Vance & Greer
100 Wagon Yard Plaza
P.O. Box 2069
Carrollton, Georgia 30117

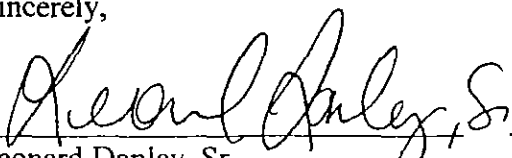
RE: *DEMPSEY and ALEXANDER v. CARROLL COUNTY COMM., et al*
UNITED STATES DISTRICT COURT, NEWNAN DIVISION
CIVIL ACTION FILE NUMBER: 3:03-CV-043-JTC

Dear Mr. Mecklin,

Per our telephone conversation today, please find enclosed seven (7) packages containing a Civil Cover Sheet and Complaint in Tort for Damages for Defendants City of Vila Rica, Villa Rica Police Department, Dean Maddox, Officer Brian Camp, Officer Robert Mullinax, Officer John Doe and Officer John Doe in the above-referenced matter. Also enclosed with this package are Instructions regarding Pre-Trial Proceedings and an Acknowledgment of Service for your signature. Please return the Acknowledgment to our office in the enclosed self-addressed stamped envelope.

Thank you for your cooperation in this matter.

Sincerely,


Leonard Danley, Sr.
Attorney at Law



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DOE, individually and as an agent for)
Villa Rica Police Department,)
DEFENDANTS.)

ACKNOWLEDGMENT OF SERVICE

COME NOW, CITY OF VILLA RICA; VILLA RICA POLICE DEPARTMENT; DEAN

MADDOX, Chief of Police, acting individually and as an agent for Villa Rica Police Department; BRIAN CAMP; acting individually and as an agent for Villa Rica Police Department; ROBERT MULLINAX, acting individually and as an agent for Villa Rica Police Department; JOHN DOE, acting individually and as an agent for Villa Rica Police Department; JOHN DOE, acting individually and as an agent for Villa Rica Police Department, and by and through their counsel, hereby acknowledge service of the Summons and Complaint in the above-styled action. Said Defendants agree not to assert any defenses as to process, service of process and sufficiency of service of process.

This ____ day of _____, 2003.

Service Acknowledged by:

David Mecklin,
Attorney for City of Villa Rica, Georgia
State Bar Number:

100 Wagon Yard Plaza
P.O. Box 2069
Carrollton, Georgia 30117
(770) 834-4467

7002 3150 0004 0434 9967

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Return Receipt Fee (Endorsement Required)	\$1.75	
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 8.80	

Sent To: **MR David Mecklin** PO. BOX 200
 Street, Apt. No.,
 or PO Box No. **100 Wagon Vard Plaza PO.**
 City, State, ZIP+4 **Carrollton, GA 30117**

PS Form 3800, June 2002 See Reverse for Instructions

7002 3150 0004 0434 9967

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Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 8.80	

Sent To: **MR David Basil**
 Street, Apt. No.,
 or PO Box No. **423 College ST**
 City, State, ZIP+4 **Carrollton, Georgia, 30117**

PS Form 3800, June 2002 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece or on the front if space permits.</p>		<p>A. Signature <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>	
<p>1. Article Addressed to:</p> <p>MR. David Mecklin TISINGER, TISINGER, VANCE & BRAD 100 WASON YARD PLAZA PO. BOX 2069 CARROLLTON, GEORGIA 30117</p>		<p>B. Received by (Printed Name) <i>Brandon Bertram</i></p>	<p>C. Date of Delivery <i>8/8/03</i></p>
		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If YES, enter delivery address below:</p>	
		<p>3. Service Type</p> <p><input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>	
		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
<p>2. Article Number (Transfer from service label)</p>		<p>7002 3150 0004 0434 9967</p>	
PS Form 3811, August 2001		Domestic Return Receipt	
		102595-02-M-1540	